



**State of West Virginia**  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
**Office of Inspector General**  
**Board of Review**  
**P. O. Box 2590**  
**Fairmont, WV 26555**

**Joe Manchin III**  
**Governor**

**Martha Yeager Walker**  
**Secretary**

January 24, 2007

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 28, 2006. Your appeal was based on the Department of Health and Human Resources' action to deny payment of specific prescription medications through the Medicaid Pharmacy Program.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

The regulations that govern the Medicaid program provides Medicaid recipients with prescription drug coverage. In addition to being eligible for Medicaid, some medications, such as stimulants and related agents, require the Medicaid member to obtain prior authorization before Medicaid payment can be made. Prior authorization may be initiated either by the dispensing pharmacist, the prescriber, or the prescriber's designee. Requests may be made by telephone, fax, or mail. If all the necessary information is provided, requests will be addressed within 24 hours. Policy states that it is the responsibility of the provider of the service, either the physician or pharmacist, to obtain the authorization before rendering the service. Requests for prior authorization after the service is rendered will be denied except in cases of back-dated eligibility. If the service is provided before prior authorization is obtained, the Medicaid member must be informed that he/she will be responsible for the bill. (West Virginia Medicaid Policy Manual, Chapter 507.1)

The information submitted at the hearing fails to demonstrate that your physician or pharmacist obtained, or attempted to obtain, the required prior authorization for the prescription medication(s) that were denied. Because the medication in question requires prior authorization, the Department was correct to deny pharmacy coverage.

It is the decision of the State Hearing Examiner to **uphold** the Department's action in denying Medicaid payment for medication without the required prior authorization criteria being met.

Sincerely,

Thomas E. Arnett  
State Hearing Examiner  
Member, State Board of Review

cc: Chairman, Board of Review  
Vicki Cunningham, R.Ph., DUR Coordinator, BMS

# **WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES**

\_\_\_\_\_,

**Claimant,**

**v.**

**Action Number 06-BOR-2381**

**West Virginia Department of Health & Human Resources,**

**Respondent.**

## **DECISION OF THE STATE HEARING EXAMINER**

### **I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 24, 2007 for \_\_\_\_\_. This hearing was held in accordance with the provisions found in the Common Chapters Manual Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was originally convened on November 28, 2006 on a timely appeal filed July 5, 2006.

### **II. PROGRAM PURPOSE:**

The program entitled Medicaid is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

The 1965 Amendments to the Social Security Act established, under Title XIX, a Federal-State medical assistance program commonly known as Medicaid. The Department of Health and Human Resources administers the Medicaid Program in West Virginia in accordance with Federal Regulations. The Bureau for Medical Services is responsible for the development of regulations to implement Federal and State requirements for the program. The Department of Health & Human Resources processes claims for reimbursements to providers participating in the program.

### **III. PARTICIPANTS:**

\_\_\_\_\_, Claimant

\_\_\_\_\_, Claimant's mother

Rita Hayner, ESS, DHHR

Vicki Cunningham, R.Ph., DUR Coordinator, BMS

Presiding at the hearing was Thomas E. Arnett, State Hearing Examiner and a member of the State Board of Review.

### **IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the Department is correct in its decision to deny Medicaid payment of prescription medication (Ritalin) retroactive to December 2005.

## **V. APPLICABLE POLICY:**

West Virginia Medicaid Policy Manual, Chapter 500

## **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

### **Department's Exhibit(s):**

- D-1 BMS, WV Medicaid Preferred Drug List with Prior Authorization Criteria
- D-1a Rational Drug Therapy Program WVBMS Drug Therapy Guidelines

### **Claimant's Exhibit(s):**

- C-1 Correspondence from [REDACTED] M.D., [REDACTED] Inc. dated October 19, 2006.
- C-2 Patient Prescription record from CVS Pharmacy #3276 (3 pages) and CVS Pharmacy #7124.
- C-3 Meds 11-06

## **VII. FINDINGS OF FACT:**

- 1) On July 5, 2006 the Claimant filed an appeal to contest the denial of Medicaid payment of prescription drug cost since December 2005.
- 2) Vicki Cunningham, R.Ph., the Department's Drug Utilization Review (DUR) Coordinator for the Bureau of Medical Services (BMS) testified that the Rational Drug Therapy Program (RDTP) is the agency contracted to provide prior authorization services to the West Virginia Medicaid Pharmacy Program. In order for a drug that requires Prior Authorization, hereinafter PA, to be approved for Medicaid payment, a request for PA must be submitted to RDTP before the prescription is filled to determine if the recipient meets PA criteria.
- 3) Ms. Cunningham testified that Medicaid has paid for several of the Claimant's prescription medications that do not require PA since December 2005 (verified in Exhibit C-2), however, Medicaid payment of prescription stimulants (Ritalin & Provigil) for the Claimant was denied because this medication requires PA for anyone over the age of 18 (years), 16 years for provigil (See Exhibit D-1 & D-1a). Ms. Cunningham testified that the Claimant's physician needed to submit a request for prior authorization that includes an eligible diagnosis (Adult Attention Deficit Disorder or narcolepsy) before payment could be made. Ms. Cunningham further testified that even if the request for PA is denied by RDTP, it can be appealed by the Claimant's physician to the Medical Director of the Bureau for Medical Services (BMS) for review. In this case, there is no evidence that PA was ever requested or that an appeal was made to the BMS Medical Director. Ms. Cunningham testified that this is a very simple procedure that occurs thousands of times a day.
- 4) With regard to Medicaid prescription payment of Fluoxetine (Prozac), Ms. Cunningham

purported that Medicaid has provided the Claimant prescription coverage for this medication as recent as September 14, 2006 & October 16, 2006. Payment for 5/26/06, 7/4/06 & 10/16/06 is verified on Exhibit C-2. Ms. Cunningham testified that the Claimant's pharmacist may elect not to fill a prescription when the prescribed dosage exceeds the manufacture's recommendation. The Department cannot direct a pharmacist to exceed the manufacture's recommendations if they determine the dosage is not clinically appropriate. Ms. Cunningham testified that the Department does not have any information to indicate that pharmacy not filling this prescription is the result of PA criteria not being met.

- 5) The Claimant stated that she was initially denied prescription coverage of Ritalin in May 2006 when she was first notified that she was approved for Medicaid coverage. She believes that her physician, Dr. [REDACTED] followed through with the request for prior authorization, however, she did not submit any evidence (correspondence from her physician or pharmacist) to indicate PA was requested. With regard to possible reimbursement, the Claimant testified that her pharmacy told her that they could only reimburse her for payment back one month.
- 6) At the conclusion of the hearing, Ms. Cunningham agreed to assist the Claimant with obtaining PA from her physician or pharmacist in order to get Medicaid prescription coverage of Ritalin (Fluoxetine), however, Ms. Cunningham indicated that she could not make the pharmacy re-bill Medicaid for Ritalin (Fluoxetine) and reimburse the Claimant for money spent out of pocket. Ms. Cunningham indicated that she would contact CVS Pharmacy about the possibility of reimbursement, but the Department cannot reimburse the Claimant directly. Ms. Cunningham took the Claimant's phone number and was to report to the Hearing Examiner within 20-days any progress that has been made toward getting PA for Ritalin.
- 7) As directed, Ms. Cunningham contacted the Hearing Examiner on 11/30/06 and indicated that she was able to assist the Claimant's physician with getting PA for Ritalin (methylphenidate). The Claimant will receive Medicaid prescription coverage for Ritalin effective 11/30/06. The Claimant's denial of a higher dosage of Prozac (Fluoxetine), however, is the result of the Claimant's pharmacist determining that the dosage is not clinically appropriate. This issue cannot be addressed or resolved by the Department.
- 8) On January 24, 2007, this Hearing Examiner contacted the Claimant via telephone to determine if the issue (PA for Ritalin & retroactive payment to December 2005) had been resolved and the Claimant indicated that a hearing decision on the matter would be necessary.
- 9) West Virginia Department of Health and Human Resources Medicaid Policy Manual, Chapter 507.1 states:

The Rational Drug Therapy Program (RDTP) is the agency contracted to provide prior authorization services to the West Virginia Medicaid Pharmacy Program. RDTP is a non-profit organization affiliated with the West Virginia University School of Pharmacy.

Prior authorizations may be initiated either by the dispensing pharmacist, the prescriber, or the prescriber's designee. Requests may be made by telephone, fax or mail. If all the necessary information is provided, requests will be addressed within 24 hours. It is the responsibility of the provider of the service, either the physician or pharmacist, to obtain the authorization before rendering the service. Requests for prior authorization after the services is rendered will be denied, except in cases of back-dated eligibility. If the services is provided before prior authorization is obtained, the Medicaid member must be informed that he/she will be responsible for the bill [Emphasis added].

There is a maximum approval limit of one year.

#### **VIII. CONCLUSIONS OF LAW:**

- 1) Whereas prior authorization was obtained for Ritalin (methylphenidate) effective November 30, 2006 and the determination has been made the Claimant's pharmacist is not filling the higher than recommended dosage of Prozac (Fluoxetine), the only remaining issue is retroactive payment of Ritalin (methylphenidate) to December 2005.
- 2) The policy that governs the West Virginia Medicaid Pharmacy Program states that stimulants and related agents like Ritalin/methylphenidate and Provigil/modafinil, must meet Prior Authorization Criteria before Medicaid prescription payment can be made.
- 3) The Prior Authorization process is outlined in Chapter 500 of the West Virginia Medicaid Policy Manual and states that it is the responsibility of the provider of the service, either the physician or pharmacist, to obtain authorization before rendering the service.
- 4) Whereas the Department has no record of a request for prior authorization or an appeal of a denied request for prior authorization, and the Claimant failed to produce evidence to corroborate allegations that her physician submitted a request prior authorization, the evidence supports the Department's decision to deny Medicaid payment for Ritalin during the period December 1, 2005 through November 29, 2006 (when PA was received). Policy states that requests for prior authorization after the services is rendered will be denied. If the services is provided before prior authorization is obtained, the Medicaid member will be responsible for the bill.

#### **IX. DECISION:**

It is the decision of the State Hearing Examiner to **uphold** the Department's action in denying Medicaid payment for medication without the required prior authorization criteria being met.

**X. RIGHT OF APPEAL:**

See Attachment.

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29

**ENTERED this 24<sup>th</sup> Day of January 2007.**

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**Thomas E. Arnett**  
**State Hearing Examiner**